

**Introduced by Senator Bowen**

February 24, 2000

---

An act to add Article 7.5 (commencing with Section 4125) to Chapter 9 of the Business and Professions Code, relating to dangerous drugs.

LEGISLATIVE COUNSEL'S DIGEST

SB 1940, as introduced, Bowen. Dangerous drugs: disclosure of consumer information.

Existing law, the Pharmacy Law, regulates the furnishing, sale, and dispensing of dangerous drugs. Under this law, when no other penalty is provided, a knowing violation of its provisions is punishable as a misdemeanor, and if not knowingly committed, a violation of its provisions is punishable as an infraction.

This bill would add provisions to the Pharmacy Law, making it unlawful, subject to specified exceptions, for designated persons or entities to disclose nonpublic, personal information, as defined, regarding a consumer. The bill would apply to nonpublic, personal information obtained in the course of furnishing, selling, or dispensing a dangerous drug to a consumer in this state, including those transactions conducted through mail order or the Internet. This bill would also require the designated persons or entities to disclose to consumers specified information concerning its collection of nonpublic, personal information and its policies concerning protection of the confidentiality of that information. Because a violation of the provisions of the Pharmacy Law is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 7.5 (commencing with Section  
2 4125) is added to Chapter 9 of Division 2 of the Business  
3 and Professions Code, to read:

4

5 Article 7.5. Pharmacy Records Privacy Act

6

7 4125. This article shall be known as and may be cited  
8 as the Pharmacy Records Privacy Act.

9 4126. The provisions of this article shall apply to the  
10 following persons and entities:

11 (a) Pharmacies.

12 (b) Pharmacy corporations, as defined in Section 4150.

13 (c) Pharmacists licensed by the board.

14 (d) Manufacturers.

15 (e) Wholesalers.

16 (f) Sales or distribution outlets licensed by the board  
17 as a wholesaler, as described in subdivision (b) of Section  
18 4160.

19 (g) Nonresident pharmacies, as described in  
20 subdivision (a) of Section 4112.

21 (h) Out-of-state manufacturers and wholesalers  
22 holding an out-of-state drug distributor's license, as  
23 described in subdivision (a) of Section 4161.

24 (i) Principals and agents of any out-of-state  
25 manufacturer, wholesaler, or pharmacy who are  
26 registered with the board as described in subdivision (a)  
27 of Section 4162.

28 (j) Any person who furnishes, sells, or dispenses a  
29 dangerous drug to a consumer in this state, including



1 those transactions conducted through mail order or the  
2 Internet.

3 4127. (a) It shall be unlawful for any person or entity  
4 subject to this article to disclose nonpublic, personal  
5 information regarding a consumer without the  
6 consumer's written consent that has not been withdrawn.  
7 This section applies to nonpublic, personal information  
8 obtained in the course of furnishing, selling, or dispensing  
9 dangerous drugs to a consumer in this state, including any  
10 transaction conducted through mail order or the  
11 Internet.

12 (b) This subdivision shall not apply if the disclosure is  
13 made in response to any of the following:

14 (1) A court order.

15 (2) A subpoena, subpoena duces tecum, notice to  
16 appear served pursuant to Section 1987 of the Code of  
17 Civil Procedure, or any provision authorizing discovery  
18 in a court or administrative agency proceeding.

19 (3) A search warrant lawfully issued to a governmental  
20 agency.

21 (4) A taxing agency for the purposes of tax  
22 administration.

23 (5) An insurer, health care service plan, hospital  
24 service plan, employee benefit plan, governmental  
25 authority, or any other person or entity responsible for  
26 paying for health care services rendered to the consumer  
27 to the extent necessary to allow the responsibility for  
28 payment to be determined and made.

29 4128. The written consent for disclosure required by  
30 Section 4127 shall consist of two parts. The first part of the  
31 consent form shall list each category of nonpublic  
32 personal information that the consumer consents to being  
33 disclosed. Categories of nonpublic personal information  
34 shall include, but are not limited to, name, address,  
35 telephone number, gender, and marital status. The  
36 second part of the consent form shall list each class of  
37 persons or entities to whom the consumer consents to  
38 have receive the categories of nonpublic personal  
39 information that the consumer consented to disclose in  
40 the first part.

1 (2) A written consent for disclosure shall include a  
2 consent provided by electronic mail or other electronic  
3 means.

4 (3) A written consent for disclosure may be obtained  
5 by a form using a checkoff system if the form contains all  
6 of the elements required by paragraph (1). The checkoff  
7 system may contain small checkoff boxes next to  
8 statements that allow the consumer to either consent to  
9 or withhold consent from disclosure of nonpublic  
10 personal information.

11 4129. For purposes of this article, the following  
12 definitions shall apply:

13 (a) “Consumer” means any natural person to whom a  
14 dangerous drug is furnished, sold, or dispensed by any  
15 person or entity listed in Section 4126.

16 (b) “Internet” has the meaning set forth in paragraph  
17 (6) of subdivision (e) of Section 17538.

18 (c) “Nonpublic, personal information” means any  
19 individually identifiable information in electronic or  
20 physical form pertaining to a consumer obtained in the  
21 course of furnishing, selling, or dispensing a dangerous  
22 drug to a consumer. “Individually identifiable” means  
23 that the information includes or contains any element of  
24 personal identifying information sufficient to allow  
25 identification of the consumer, for example, the  
26 consumer’s name, address, electronic mail address,  
27 telephone number, or social security number, or other  
28 information that alone or in combination with other  
29 publicly available information reveals the identity of the  
30 consumer. “Nonpublic personal information” does not  
31 include individually identifiable information in any list,  
32 description, or other grouping of consumers that is  
33 publicly available if the list, description, or other  
34 grouping of consumers was derived without using  
35 individually identifiable information that is not publicly  
36 available.

37 4129.5. Each person or entity listed in Section 4126,  
38 prior to collecting nonpublic, personal information from  
39 a consumer, shall provide the consumer with a summary  
40 disclosure that lists all of the following:



1 (a) The categories of nonpublic personal information  
2 it collects.

3 (b) Its practices and policies with respect to using  
4 nonpublic personal information, and the persons or  
5 entities that may receive and use this information.

6 (c) The policies it maintains to protect the  
7 confidentiality and security of nonpublic personal  
8 information.

9 SEC. 2. No reimbursement is required by this act  
10 pursuant to Section 6 of Article XIII B of the California  
11 Constitution because the only costs that may be incurred  
12 by a local agency or school district will be incurred  
13 because this act creates a new crime or infraction,  
14 eliminates a crime or infraction, or changes the penalty  
15 for a crime or infraction, within the meaning of Section  
16 17556 of the Government Code, or changes the definition  
17 of a crime within the meaning of Section 6 of Article  
18 XIII B of the California Constitution.

